

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 19**

PREMIER HOLDING COMPANY, INC. )  
d/b/a PREMIER ELECTRIC )  
 )  
Employer, )  
 )  
And )  
 )  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS, LOCAL 73, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

Case No. 19-RC-089887

**PETITIONER'S EXCEPTIONS TO  
HEARING OFFICER'S REPORT  
AND RECOMMENDATION ON  
CHALLENGED BALLOTS**

**NATURE OF THE PROCEEDINGS**

On April 3, 2013, Hearing Officer Jessica Dietz issued a Hearing Officer's Report and Recommendations on Challenged Ballots. Pursuant to Section 102.69 of the Board's Rules and Regulations, this is Petitioner's Exceptions to that Report and Recommendation. Petitioner has filed a Brief in Support of Exceptions separately.

**EXCEPTIONS**

1. Petitioner takes exception to the Hearing Officer's statement: "To the extent that testimony or other evidence not specifically mentioned may appear to contradict my findings, it is because the evidence or testimony has been rejected as not credible or of little probative weight." (p. 2, fn. 2)

2. Petitioner takes exception to the Hearing Officer's statement: "Any inconsistencies in testimony appeared to be solely due to confusion or lack of clarity

with respect to their memories rather than from any deliberate evasiveness or intent to mislead.” (p. 2, fn. 3)

3. Petitioner takes exception to the finding that “Mr. Jost is currently working on the Sports Authority jobsite in Coeur d’Alene, Idaho in a ‘lead man’ position.” (p. 3, ¶2)

4. Petitioner takes exception to the finding that “Many of the witnesses used the terms ‘lead man’ and ‘foreman’ interchangeably during their testimony.” (p. 3, fn. 4)

5. Petitioner takes exception to the finding that “The evidence establishes that Mr. Jost does not have any role in the selection of the employees who are assigned to the Sports Authority jobsite or their work schedules.” (p. 3, ¶3)

6. Petitioner takes exception to the finding that “Mr. Smith makes frequent visits to the Sports Authority jobsite...” (*Id.*)

7. Petitioner takes exception to the finding that “At the hearing, all of the witnesses testified about the various job responsibilities of the lead man position” and the remaining findings contained in the same paragraph. (p. 3, ¶4)

8. Petitioner takes exception to the finding that “Based on record evidence, as a lead man on the Sports Authority jobsite...” and the remaining findings contained in the same paragraph. (p. 3, ¶5)

9. Petitioner takes exception to the finding that “At the same time, the evidence establishes that Mr. Jost uses the tools of the trade and performs electrical

work such as bending pipe and pulling wire, the same installation work performed by other employees on the job site.” (p. 4, ¶2)

10. Petitioner takes exception to the finding that “As lead man, Mr. Jost is only responsible for his own work and is not held responsible for the work performed by any of the other employees on the jobsite.” (*Id.*)

11. Petitioner takes exception to the finding that “No evidence was presented regarding the percentage of time Mr. Jost spends performing the duties of a lead man or the percentage of time he spends working with the tools.” (p.4, ¶3)

12. Petitioner takes exception to the finding that “Further, no evidence was presented with regard to the amount of time Mr. Jost spends ‘assigning’ or ‘directing’ employees during his work day.” (*Id.*)

13. Petitioner takes exception to the Hearing Officer basing the factual findings concerning the job responsibilities of Mr. Jost solely on the work is presently performing on the Sports Authority project.

14. Petitioner takes exception to the finding that “Mr. Paradee has been the lead man on the Fairchild Air Force Base (FAFB) project for four years.” (p. 4, ¶5)

15. Petitioner takes exception to the finding that “It is clear from the record that Mr. Smith or Mr. Beck, not Mr. Paradee, assigns employees to the FAFB jobsite.” (*Id.*)

16. Petitioner takes exception to the finding that “The record evidence establishes that as a lead man, Mr. Paradee’s responsibilities include escorting new

employees assigned to the project to the gate office..." and all remaining findings in this paragraph that are predicated on the finding that Mr. Paradee is a lead man. (p. 4, ¶6)

17. Petitioner takes exception to the finding that "Additionally, it is clear from the record evidence that Mr. Paradee works with the tools performing electrical work just as all other employees on the project." (p. 5, ¶1)

18. Petitioner takes exception to the finding that "The work on this jobsite is largely repetitive in nature as the employees move from house to house across the base. The electrical work performed by the employees includes pulling wire, roughing in houses, or trimming out the houses. Mr. Paradee is not responsible for inspecting the work of the employees on the team; instead, there is an outside inspector who inspects the work of all employees." (p. 5, ¶1)

19. Petitioner takes exception to the finding that "Furthermore, Mr. Paradee is only held responsible for his own work and is not held responsible for the work of his coworkers." (*Id.*)

20. Petitioner takes exception to the finding that "No evidence was presented regarding the percentage of time Mr. Paradee spends performing the duties of a lead man and the percentage of time he spends working with the tools." (p. 5, ¶2)

21. Petitioner takes exception to the finding that "Further, no evidence was presented with regard to the amount of time Mr. Paradee spends 'assigning' or 'directing' employees during the workday." (*Id.*)

22. Petitioner takes exception to the Hearing Officer basing the factual findings concerning the job responsibilities of Mr. Paradee solely on a description of his present work as not reflective of his work during the relevant time period.

23. Petitioner takes exception to the Hearing Officer's failure to make factual findings based on the vast majority of the evidence presented at hearing.

24. As set forth in its accompanying brief, Petitioner takes exception to the Hearing Officer applying a Section 2(11) analysis from the Health Care industry to a case involving electrical installation in the construction industry.

25. Petitioner takes exception to the finding that "Here, the record establishes that Mr. Jost and Mr. Paradee do not appoint employees to a jobsite or to a shift. Instead, such terms are set solely by Mr. Smith or Mr. Beck without consultation with Mr. Jost or Mr. Paradee." (p. 6, ¶15)

26. Petitioner takes exception to the finding that "Further, the record does not disclose a basis for determining that Mr. Jost or Mr. Paradee in any other way assigns significant overall duties or effectively recommend the same" and the remaining findings contained in that same paragraph. (*Id.*)

27. Petitioner takes exception to the finding that "I find, based on the record evidence, that the Petitioner has not demonstrated that Mr. Jost or Mr. Paradee is held accountable for the actions of other electricians. To the contrary, it is clear that neither is held accountable for the work of other employees and instead the employees are each held accountable for their own work. Therefore, I find that Petitioner has failed to



meet its burden to demonstrate that Mr. Jost or Mr. Paradee possess the Section 2(11) indicia of responsible direction.” (p. 7, ¶2)

28. Petitioner takes exception to the finding that “I find that the evidence of secondary indicia fails to meet the Petitioner’s burden of showing that Mr. Jost or Mr. Paradee possesses any of the primary supervisory authority as defined in Section 2(11) of the Act. (p. 7, ¶4)

29. Petitioner takes exception to the finding that “The Petitioner did not present any case law or legal authority in support of its contention that the settlement of an unfair labor practice charge is evidence of supervisory status, or is otherwise controlling, in a representation case proceeding.” (p. 8, ¶2)

30. Petitioner takes exception to the Hearing Officer’s failure to take cognizance of the Settlement Agreement and Notice Posting entered by the Employer in an unfair labor practice case directly connected to, and bearing upon, the issues presented at hearing.

31. Petitioner takes exception to the finding that “Again, because I have determined that Petitioner has failed to meet its burden to demonstrate that either Mr. Jost or Mr. Paradee possess primary indicia of supervisory authority, evidence of possible secondary indicia is irrelevant.” (p. 8, ¶2)

32. Petitioner takes exception to the findings contained in the first two sentences of the paragraph under the heading “V. Summary and Recommendations.”

DATED this X day of April, 2013.



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